

**REMARKS**

Claims 10 to 20 are pending in the present application.

Applicants thank the Examiner for considering the Information Disclosure Statement.

Applicants respectfully request that the Examiner acknowledge the claim for foreign priority and indicate in the next Communication whether all certified copies of the priority documents have been received and whether the Drawings are accepted.

In view of the following, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

Claims 10, 14, 15, 17 and 20 were rejected under 35 USC § 102(b) as anticipated by U.S. Patent No. 5,554,983 ("Kitamura").

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102(b), the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (*See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the prior Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (*See Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art." (*See* M.P.E.P. § 2112; emphasis in original; and *see Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

While the rejections may not be agreed with, to facilitate matters, claims 10 and 17 have been rewritten to indicate that *a counter is started when the movement of the at least one object comes to a standstill*. Further, claims 10 and 17 are clarified to the effect that the *enabling of counting of the counter occurs only if the at least one object continues to be in*

*the standstill, and a signal is generated when a counter value reaches a predetermined threshold value.”*

In contrast, the Kitamura reference does not identically describe (or even suggest) the feature of using a counter, let alone enabling a counter when an object comes to a standstill, as provided for in the context of the claimed subject matter. Instead, the Kitamura reference concerns a process in which an alarm is issued immediately after an object is determined to be stationary (col. 22, lines 55 to 57). Thus, Kitamura simply does not identically describe (or even suggest) the feature of “*starting a counter when the movement of the at least one object comes to a standstill; enabling counting of the counter only if the at least one object continues to be in the standstill; and generating a signal when a counter value reaches a predetermined threshold value,*” as provided for in the context of claim 10.

Similarly, Kitamura does not identically disclose (or even suggest) all the features of claim 17, as presented, since claim 17 provides for features analogous to those of claim 10.

Accordingly, it is respectfully submitted that claim 10 and 17, as presented, are allowable. Claims 14 and 15, and claim 20 respectively depend from claims 10 and 17, as presented, and are therefore allowable for at least the same reasons as claims 10 and 17, as presented.

Accordingly, it is respectfully submitted that claims 10, 14, 15, 17 and 20 are allowable.

Withdrawal of the anticipation rejections is therefore respectfully requested.

Claim 16 was rejected under 35 U.S.C. §103(a) as being unpatentable over Kitamura.

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *See KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct.

1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

As explained above, the Kitamura reference does not disclose (or even suggest) all of the features of claim 10, as presented. Claim 16 depends from claim 10, as presented, and is therefore allowable for at least the same reasons.

Claims 11 to 13, 18 and 19 were rejected under 35 U.S.C. §103(a) as being unpatentable over Kitamura in view of U.S. Patent 5,966,074 (“Baxter”).

As explained above, the Kitamura reference does not disclose (or even suggest) all of the features of claims 10 and 17, as presented. Claims 11 to 13, and claims 18 and 19 respectively depend from claims 10 and 17, as presented, and are therefore allowable for essentially the same reasons provided above, since Baxter does not cure -- and is not asserted to cure -- the critical deficiencies of the Kitamura reference.

Additionally, claims 13 and 19 have been rewritten to include the features of *determining that at least one list entry is needed to continue tracking the movement of the at least one object; and re-initializing the list while carrying over the at least one entry to the re-initialized list.*

The Baxter reference concerns an intrusion detection system in which a new trajectory thread list is created when multiple center of mass locations are measured at any instant in time. Thread lists are ended when a center of mass location is no longer detected. Further, when motion is detected again, a determination is performed regarding which thread list a center of mass location should be placed into. In short, Baxter merely refers to continuing thread lists that are never re-initialized.

Accordingly, claims 13 and 19 are allowable for these additional reasons, in addition to those provided above as to claims 10 and 17.

Withdrawal of the obviousness rejections of the claims is therefore respectfully requested.

In sum, claims 10 to 20 are allowable.

**CONCLUSION**

In view of the foregoing, it is respectfully submitted that all of the presently pending claims are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn, since all issues raised have been addressed and obviated. An early and favorable action on the merits is therefore respectfully requested.

Respectfully submitted,

Dated: 12/2/2008

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